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October 16, 2013

VIA RESS, COURIER & E-MAIL

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, Suite 2700
Toronto, Ontario
M4P 1E4

Dear Ms. Walli:

Re: Review of Framework Governing the Participation of Intervenors in Board Proceedings – Phase 1 – Board File No. EB-2013-0301

Pursuant to the Ontario Energy Board's letter dated August 22, 2013, attached please find the further submission of Enbridge Gas Distribution Inc. in the above noted proceeding.

Yours truly,

(Original Signed)

Stephanie Allman
Regulatory Coordinator

Attach.

**EB-2013-0301 (Phase I): Review of Framework Governing
the Participation of Intervenor in Board Proceedings
Enbridge Gas Distribution Reply Submissions**

By Notice dated August 22, 2013, the Ontario Energy Board initiated a consultation regarding a Review of the Framework Governing the Participation of Intervenor in Board Proceedings (EB-2013-0301). Stakeholders provided written submissions on September 27, 2013 and a Stakeholder Conference was held on October 8, 2013. The Board also invited reply submissions by October 16, 2013. Enbridge Gas Distribution (Enbridge, or the Company) appreciates the opportunity to provide these reply submissions.

Enbridge remains committed to working with the Board to enhance the processes that engage Stakeholder participation. As explained in Enbridge's September 27th Submission, the Company believes that intervenors play an important role in Board proceedings. Intervenor assist the Board in meeting its statutory objectives and provide diverse perspectives about the public interest. Enbridge places great value in consultative processes that enable utilities to work directly with intervenors to solve particular issues (for example, the Enbridge CIS consultation, or the Open Bill consultation), and in the ADR processes, which allow parties to reach agreements, thus avoiding long, complicated adjudicative proceedings. These processes benefit the Board in being able to efficiently meet its mandate, and benefit stakeholders and utilities by facilitating creative and durable solutions.

A key item of difference that emerged from the written submissions in this Review, and from the presentations and discussions at the Stakeholder Conference, relates to whether there is a need for the Board to be reviewing and changing the Intervenor Framework. Generally speaking, the existing intervenors endorse the current Intervenor Framework, while applicants take varying positions on the degree of change that is warranted.

From Enbridge's perspective, the current Intervenor Framework generally functions well, but improvements could be made to enhance efficiency, transparency, and accountability. These improvements can be made without taking away from the important role that is played by intervenors. Enbridge believes that this Review of the Intervenor Framework is a timely opportunity to consider the form and substance of such improvements. The Company's suggestions for improvements to enhance efficiency, transparency, and accountability are set out within its September 27th submission, and in the presentation made on October 8th.¹

Having reviewed submissions of other parties, and considered the discussions from the October 8th Stakeholder Conference, Enbridge has several brief submissions in reply.

1. Defining the Board's Motivation

It is clear that many Stakeholders are concerned with the Board's possible motivations for this Review, which no doubt coloured or tempered their input accordingly. At least twice during the Stakeholder Conference, a request was made for the Board to communicate its motivation

¹ Transcript from Stakeholder Session, October 8, 2013 ("Transcript"), at pp. 71-83.

behind this Review.² It is not clear to Enbridge that the Board is likely to provide this requested information. However, in the event that the Board chooses to do so, Enbridge requests the opportunity to provide further submissions in response.

2. Defining Public Interest Interventions

In Enbridge's opinion, part of the role of Board Staff is to represent the broad public interest (which is different from most intervenors, who represent particular ratepayer and landowner interests). That said, Enbridge does not believe that Board Staff should always be the only party to represent the public interest. As Enbridge explained at the Stakeholder Conference in response to a question from Ecology Ottawa³, there may at times be more specific voices that speak to a particular part of the public interest (for example with respect to environmental concerns). Such intervenors can assist the Board by representing a diversity of views, which can be regarded as better representing the public interest. However, where proposed intervenors exist to represent a public interest perspective, as opposed to a clearly defined group of consumers or ratepayers, then the Board and others should have an understanding of the mission statement and constituency or citizenry that sponsors that group.

3. Identification of Intervenor Instructions

A main topic of discussion at the Stakeholder Conference was around whether and how intervenors should establish that they are truly representative of and instructed by their constituency. The Company's written submissions and oral presentation explained why this is important.⁴ At the Stakeholder Conference, the CFIB described a process that is responsive to the concerns raised within Enbridge's submissions:

So legal counsel and experts will make proposals to CFIB when a consultation or a rate application comes forward. We then discuss it with CFIB management and they decide and give approval for that, based on the interests of their members. Legal counsel and experts draft documents. CFIB approves them. CFIB reviews and explains the concerns of members to counsel and the experts. Counsel and the experts then have a responsibility to accurately reflect those in the participation. And day-to-day decisions as to how that participation will be managed are left to the experts.⁵

Enbridge believes that it would be useful to the Board to have other intervenors describe the process through which they obtain instructions. This would not constitute any new work on the part of intervenors, simply a statement for how the information is shared with, and approved by, represented constituencies.

² For example, see Transcript, pp. 121 and 126.

³ Transcript, pp. 81-82.

⁴ Enbridge's September 27th Submissions, at pp. 4-7 and Transcript, p. 73-74.

⁵ Transcript, p. 86.

4. The Coordination of Intervenor Participation

There was a lot of discussion at the Stakeholder Conference about whether and how to require better coordination, and reduced duplication, among intervenors. Enbridge acknowledges the comments made by several intervenors, such as CCC⁶, that there is already a lot of coordination taking place behind the scenes. Concerns remain, though, about the perception from at least some intervenors that there is no need for changes: see for example the comment about the benefits from “additional sets of eyes”.⁷ The number of intervenors in OEB proceedings seems to be increasing, even as the subject matter of applications is not changing. Efficiency in such circumstances demands that intervenors work together, to maintain the efficiency of the process. As explained in Enbridge’s written submissions and presentation, the Board can use its existing cost award powers to ensure that appropriate coordination and combination of effort is being undertaken by intervenors.⁸ Further, the Board could consider additional cost awards (bonuses, in effect) for those intervenors who make notable contributions to the efficiency of the process.⁹

5. The Role of Board Staff in Commenting Upon Interventions and Cost Award Requests

Enbridge would like to see Board Staff take an active role in commenting upon intervenor requests for status and cost awards. As noted in Enbridge’s written submissions, an applicant is put in an awkward situation by being expected to comment on, or object to either a request for status or cost award of a party given that it can damage relations with that party.¹⁰ A case in point was provided during the Stakeholder Conference where Ecology Ottawa pointed out a case in where an LDC objected to a cost award, as an example of why LDCs are not all “great corporate citizens”:

Ecology Ottawa's experience has been very limited with the Board, perhaps too limited, but at one point an LDC that I won't mention actually objected to a very, very modest cost award. Fortunately the Board overruled the objection, but for me that's an indication that some LDCs, if they're not trying to shut the door, at least they're trying to close the door on bringing in, I would say, new intervenors into the process.¹¹

Given that Enbridge sees great value in working with intervenors through Settlement and Consultative processes, the relationship with parties is sometimes vital. To address this concern, Enbridge recommends that Board Staff take the lead on providing the Board with comments and submissions about requests for intervenor status and cost awards. Board Staff are uniquely positioned to provide such comments from an independent perspective, and with the benefit of having observed the role and conduct of each intervenor over time and within

⁶ Transcript, p. 101.

⁷ Transcript, p. 90.

⁸ Enbridge’s September 27th Submissions, at pp. 10-12 and Transcript, p. 75-77.

⁹ Enbridge’s September 27th Submissions, at p. 12 and Transcript, p. 77.

¹⁰ Enbridge’s September 27th Submissions, at pp. 7 and 11-12

¹¹ Transcript, pp. 135-136.

particular cases. In that regard, and to expand on a discussion between Enbridge, NAN and SEC at the Stakeholder Conference¹², Enbridge's proposal would see Board Staff not simply asking clarification questions about intervention requests, but also taking the lead in appropriate cases in objecting to intervenor status, or to aspects of a cost award request.

6. Issues for Future Discussion

There are a couple of items that arose during the Stakeholder Conference that Enbridge would like to highlight as being important for future review by the Board.

The first relates to the role of Board Staff within proceedings. As seen from discussions during the "Plenary Session" part of the Stakeholder Conference, there is clearly a range of views about whether Board Staff should be advocates or whether their role should be more administrative. However, as this issue was not the focus of the Board's questions within the August 22nd Notice, many parties (including Enbridge) have not addressed the matter. To allow for full consideration of this issue, Enbridge suggests that it be expressly included within the scope of items to be discussed in Phase II of this Review of the Intervenor Framework.

A second item that arose through the Stakeholder Conference is the opportunity for improvements to the Board's processes. While not in scope for this Review, it is clear that parties have ideas about how greater efficiency and effectiveness can be achieved through Board proceedings, beyond making changes to the Intervenor Framework. Enbridge notes the comment within the Board's August 22nd Notice that "the Board is undertaking a review of its application and hearing process, with the goal enhancing the efficiency and effectiveness of that process".¹³ Enbridge requests that such review be conducted through a similar consultative process as being undertaken in this case. It may be helpful to parties if the Board could provide parties with an overview of the Board's concerns with its current processes, and with examples or proposals about things that might be changed.

¹² Transcript, at pp. 79-81

¹³ August 22, 2013 Notice, at p. 2.